IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6307 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M N BARIA - Petitioner(s)
Versus
BULSAR DIST. PANCHAYAT & 2 - Respondent(s)

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Appearance :
MR BY MANKAD for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
None for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/12/2006

ORAL JUDGMENT

1. Shri B.Y. Mankad, learned counsel for the petitioners. None for the respondent no.1 though name of Shri H.R. Lathigara appears. None for

the respondents no. 2 and 3 despite service. Shri A.Y. Kogje, learned AGP, when was called upon to answer the petition, made a submission that the State is not a party.

2. Short facts necessary for disposal of the present writ application are that the petitioner-Bilimora Parsi Zorastrian Anjuman Trust Fund who was possessing two parcels of land, made applications to the Taluka Development Officer for conversion of the user from agricultural to non-agricultural. The said applications were allowed by the Taluka Development Officer on 13.8.77 [Annexure:A] and by another order dated 16.8.77 [Annexure:B]. Each of the order contained condition no. 4 that if within a period of six months from the date of the permission, constructions are not raised, then the present petitioner would be liable to pay penal amount to the concerned authority. Before the petitioner could open the construction, one Balubhai Anant Vishnu Dandekar challenged the said orders before the District Development Officer, who by his order dated

31.12.77 stayed the effect and operation of the said two permissions. The result of the said order was that the petitioner could not raise any construction and the permissions granted on 13.8.77 and 16.8.77 in view of the order of the stay were kept in suspended animation.

3. On 9.2.81, the petitioner submitted to the Talati-cum-Mantri that in view of the stay granted by the District Development Officer, they cannot be asked to pay the additional amount nor fine can be imposed against them. The Taluka Development Officer, vide his letter dated 29.7.87 informed the petitioner Trust that in view of the stay order dated 31.12.77, the penalty/fine amount would not be recovered.

4. The District Development Officer was pleased to reject the objections-cum-appeal filed by Balubhai Anant Vishnu Dandekar and consequently vacated the stay earlier granted on 31.12.77, by his final order dated 20.12.93. With effect from 20.12.93, the petitioner became entitled to raise the construction etc.

5. On 7.2.94, the Talati-cum-Mantri issued notice

to the petitioners that in view of the condition no. 4 and as the petitioner did not raise any construction within a period of six months from the date of the permissions, the petitioners were liable to pay the fine and the penalty. According to the learned counsel for the petitioners, the Talati-cum-Mantri recovered some amount under duress and coercion and even thereafter issued another notice dated 21.3.94 to deposit the balance amount.

6. Learned counsel for the petitioner submits that as the effect and operation of the permissions granted on 13.8.77 and 16.8.77 were kept in abeyance, the petitioner could not do anything, because, if it was to raise any construction despite the stay of the permissions, the construction would have been illegal and such construction could be demolished by the authority. His submission is that on one side the appellate authority had granted stay against the petitioner and at the same time, the subordinates to the said appellate authority are trying to recover the money less realizing that

within a period of six months, the effect of permission was kept in abeyance and the petitioner was denied its right to raise construction. His submission is that in view of the changed circumstances, the petitioner would be entitled to raise construction within a period of six months from the date of rejection/dismissal of the appeal and vacation of the stay.

7. None appears for the other side.

8. It could not be disputed by anybody in view of the documents which have been produced on the records that the permissions were granted on 13.8.77 and 16.8.77 and within a period of six months [period within which the petitioner could raise construction], the effect of the permissions was stayed. Consequent upon grant of the stay order, so long as the said order was effective, it will have to be presumed and deemed that there was no permission in favour of the petitioner. On dismissal of the appeal and vacation of the stay order, the orders/permissions dated 13.8.77 and 16.8.77

revived but the period lost in between under the order of stay cannot be taken to be a period wherein the petitioner though entitled to raise construction did not raise the same because of its voluntary lapses. There was neither non-action or inaction on the part of the petitioner, but in view of the stay order granted by the authority, the petitioner was restrained from using and utilizing the permissions.

9. Once it is held that the petitioner was not entitled to raise the construction between 31.12.77, the date on which interim stay was granted and 20.12.93 the date on which stay was vacated, it will have to be held that condition no.4 of the permissions would not apply.

10. The Talati-cum-Mantri and the Taluka Development Officer were absolutely unjustified in issuing notices for recovery of fine/penalty. The notices of demand are based on illegal foundation and cannot be allowed to stand. The notices of demand dated 20.12.93 and 7.2.94 are accordingly quashed.

11. In view of the findings recorded above, it is further held that the petitioner would be entitled to refund of Rs. 22,824.69 ps. which were illegally recovered from it.

12. It is further directed that as the recovery was absolutely illegal and without any authority of law, the petitioner would be entitled to 12% yearly interest from the date of its recovery till the date of the payment to the petitioner.

13. The petition is allowed with the directions aforesaid. Rule is made absolute. No costs.

[R.S. GARG, J.]

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